

an individual test result or the harmonic average of selected test results to satisfy the requirements of paragraph (c)(2)(i) of this section.

(3) If confirmatory testing was conducted by the manufacturer under the provisions of paragraph (b) of this section, the data from this testing will be evaluated by the Administrator for reasonableness and representativeness per paragraph (c)(1) of this section.

(i) The fuel economy data which are determined to best meet the criteria of paragraph (c)(1) of this section will be accepted for use in subpart C or F of this part.

(ii) City, HFET, US06, SC03 and Cold temperature FTP test data will be considered separately.

(iii) If more than one test was conducted, the Administrator may select an individual test result or the harmonic average of selected test results to satisfy the requirements of paragraph (c)(2)(i) of this section.

(4) If no confirmatory testing was conducted by either the Administrator or the manufacturer under the provisions of paragraph (a) and (b) of this section, respectively, then the data submitted under the provisions of § 600.006(c) or (e) shall be accepted for use in subpart C or F of this part.

(i) City, HFET, US06, SC03 and Cold temperature FTP test data will be considered separately.

(ii) If more than one test was conducted, the harmonic average of the test results shall be accepted for use in subpart C or F of this part.

(d) If, based on a review of the fuel economy data generated by testing under paragraph (a) of this section, the Administrator determines that an unacceptable level of correlation exists between fuel economy data generated by a manufacturer and fuel economy data generated by the Administrator, he/she may reject all fuel economy data submitted by the manufacturer until the cause of the discrepancy is determined and the validity of the data is established by the manufacturer.

(e)(1) If, based on the results of an inspection conducted under § 600.005(b) or any other information, the Administrator has reason to believe that the manufacturer has not followed proper testing procedures or that the testing

equipment is faulty or improperly calibrated, or if records do not exist that will enable him to make a finding of proper testing, the Administrator may notify the manufacturer in writing of his finding and require the manufacturer to:

(i) Submit the test vehicle(s) upon which the data are based or additional test vehicle(s) at a place he may designate for the purpose of fuel economy testing.

(ii) Conduct such additional fuel economy testing as may be required to demonstrate that prior fuel economy test data are reasonable and representative.

(2) Previous acceptance by the Administrator of any fuel economy test data submitted by the manufacturer shall not limit the Administrator's right to require additional testing under paragraph (e)(1) of this section.

(3) If, based on tests required under paragraph (e)(1) of this section, the Administrator determines that any fuel economy data submitted by the manufacturer and used to calculate the manufacturer's fuel economy average was unrepresentative, the Administrator may recalculate the manufacturer's fuel economy average based on fuel economy data that he/she deems representative.

(4) A manufacturer may request a hearing as provided in § 600.009 if the Administrator decides to recalculate the manufacturer's average pursuant to determinations made relative to this section.

[71 FR 77931, Dec. 27, 2006]

**§ 600.008-77 Review of fuel economy data, testing by the Administrator.**

(a) Fuel economy data must be judged acceptable by the Administrator in order for the test results to be used for the purposes of subpart C or F of this part. The Administrator will evaluate the acceptability of the fuel economy data from either a fuel economy data vehicle or a certification vehicle on the basis of the data submitted under § 600.006 or test data generated by the Administrator, as applicable, in accordance with good engineering practice.

(b) If, in the Administrator's judgment, the city and highway fuel economy results (or the harmonic averages, as applicable, if more than one test were conducted) for a fuel economy data vehicle, or for a certification vehicle, are reasonable and representative, the Administrator will accept the fuel economy data (or harmonic averages, as applicable, of the city and highway fuel economy data if more than one test was conducted) for use in subpart C or F of this part. In making this determination, the Administrator will, when possible, compare the results of a test vehicle to those of other similar test vehicles.

(c) If, in the Administrator's judgment, the city and highway fuel economy results (or the harmonic averages if more than one test were conducted) for a fuel economy data vehicle or for a certification vehicle are not reasonable or representative, the Administrator will notify the manufacturer in writing of his finding and require the manufacturer to submit the test vehicle(s) in question, at a place he may designate, for the purpose of fuel economy testing.

(d) The Administrator may require that any fuel economy data vehicle or certification vehicle be submitted, at a place he may designate, for the purpose of confirmation of fuel economy testing.

(e) For any fuel economy data vehicle that the Administrator has required to be submitted, at a place he may designate for the purpose of fuel economy testing, and for any certification vehicle, the Administrator will follow this procedure:

(1) The manufacturer's data (or harmonically averaged data if more than one test was conducted) will be compared with the results of the Administrator's test.

(2) If, in the Administrator's judgment, the comparison in paragraph (e)(1) of this section indicates a disparity in the data, the Administrator will repeat the city test or the highway test or both as applicable.

(i) The manufacturer's average test results and the results of the Administrator's first test will be compared with the results of the Administrator's

second test as in paragraph (e)(1) of this section.

(ii) If, in the Administrator's judgment, both comparisons in (e)(2)(i) of this section, indicate a disparity in the data, the Administrator will repeat the city fuel economy test or highway fuel economy test or both as applicable until:

(A) In the Administrator's judgment no disparity in the data is indicated by comparison of two tests by the Administrator or by comparison of the manufacturer's average test results and a test by the Administrator, or

(B) Four city tests or four highway tests or both, as applicable, are conducted by the Administrator in which a disparity in the data is indicated when compared as in paragraph (e)(2) of this section.

(3) If there is, in the Administrator's judgment, no disparity indicated by comparison of manufacturer's average test results with a test by the Administrator, the test values generated by the Administrator will be used to represent the vehicle.

(4) If there is, in the Administrator's judgment, no disparity indicated by comparison of two tests by the Administrator, the harmonic averages of the city and highway fuel economy results from those tests will be used to represent the vehicle.

(5) If the situation in paragraph (e)(2)(ii)(B) of this section occurs, the Administrator will notify the manufacturer, in writing, that the Administrator rejects that fuel economy data vehicle.

(f) The fuel economy data determined by the Administrator under paragraph (e) (3) or (4) of this section, together with all other fuel economy data submitted for that vehicle under § 600.006 (c) or (e) will be evaluated for reasonableness and representativeness per paragraph (b) of this section. The fuel economy data which are determined to best meet the criteria of paragraph (b) of this section will be accepted for use in subpart C or F of this part.

(g) If, based on a review of the fuel economy data generated by testing under paragraph (e) of this section, the Administrator determines that an unacceptable level of correlation exists between fuel economy data generated

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by a manufacturer and fuel economy data generated by the Administrator, he may reject all fuel economy data submitted by the manufacturer until the cause of the discrepancy is determined and the validity of the data is established by the manufacturer.

(h)(1) If, based on the results of an inspection conducted under § 600.005(b) or any other information, the Administrator has reason to believe that the manufacturer has not followed proper testing procedures or that the testing equipment is faulty or improperly calibrated, or if records do not exist that will enable him to make a finding of proper testing, the Administrator may notify the manufacturer in writing of his finding and require the manufacturer to:

(i) Submit the test vehicle(s) upon which the data are based or additional test vehicle(s) at a place he may designate for the purpose of fuel economy testing.

(ii) Conduct such additional fuel economy testing as may be required to demonstrate that prior fuel economy test data are reasonable and representative.

(2) Previous acceptance by the Administrator of any fuel economy test data submitted by the manufacturer shall not limit the Administrator's right to require additional testing under paragraph (h)(1) of this section.

(3) If, based on tests required under paragraph (h)(1) of this section, the Administrator determines that any fuel economy data submitted by the manufacturer and used to calculate the manufacturer's fuel economy average was unrepresentative, the Administrator may recalculate the manufacturer's fuel economy average based on fuel economy data that he deems representative.

(4) A manufacturer may request a hearing as provided in § 600.009 if the Administrator decides to recalculate the manufacturer's average pursuant to determinations made relative to this section.

[41 FR 38685, Sept. 10, 1976, as amended at 41 FR 49760, Nov. 10, 1976]

### § 600.009-85 Hearing on acceptance of test data.

(a)(1) If the Administrator rejects the following:

(i) The use of a manufacturer's fuel economy data vehicle, in accordance with § 600.008 (e) or (g), or

(ii) The use of fuel economy data, in accordance with § 600.008 (c), or (f), or

(iii) The determination of a vehicle configuration, in accordance with § 600.206(a), or

(iv) The identification of a car line, in accordance with § 600.002(a)(20), or

(v) The fuel economy label values determined by the manufacturer under § 600.312(a), then

(2)(i) The manufacturer may, within 30 days following receipt of notification of rejection, request a hearing on the Administrator's decision.

(ii) The request must be in writing, signed by an authorized representative of the manufacturer, and include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objection.

(iii) If, after the review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue(s), the Administrator shall provide the manufacturer with an opportunity to request a hearing in accordance with the provisions of this section with respect to such issue(s).

(b)(1) After granting a request for a hearing under paragraph (a) of this section the Administrator will designate a Presiding Officer for the hearing.

(2) The General Counsel will represent the Environmental Protection Agency in any hearing under this section.

(3) If a time and place for the hearing has not been fixed by the Administrator under paragraph (a) of this section the hearing will be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(c)(1) Upon his appointment pursuant to paragraph (a) of this section, the Presiding Officer shall establish a hearing file. The file consists of the notice issued by the Administrator under paragraph (a) of this section together with any accompanying material, the